

Hon Kelvin Davis
Minister of Corrections

Corrections Amendment Regulations 2019 – Cabinet Social Wellbeing Committee

Date of issue: 28 November 2019

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Documents	Comment
Proposal to Amend the Corrections Regulations <i>Cabinet paper</i> Minister of Corrections	Released in full
Proposal to Amend the Corrections Regulations <i>Cabinet minute</i> Cabinet Office	Released in full

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In Confidence

Office of the Minister of Corrections

Chair, Cabinet Social Wellbeing Committee

Proposal to amend the Corrections Regulations

Proposal

1. This paper seeks Cabinet's agreement to five amendments to the Corrections Regulations. There is one amendment relating to tie-down beds and four minor and technical amendments.

Executive Summary

2. The Corrections Regulations 2005 (the Regulations) provide operational detail for the management of Corrections' sites, systems, and powers. Some amendments to the Regulations are required to reflect operational improvements, or to address technical errors within the Regulations.
3. This paper seeks Cabinet's agreement to amend the Regulations to:
 - 3.1. remove the authority for Corrections to use tie-down beds
 - 3.2. fix a previous amendment's inadvertent removal of Security Officers' ability to use waist restraints in conjunction with handcuffs
 - 3.3. update a requirement that prison search notices inform people they may be searched by detection dogs, rather than just narcotics detection dogs
 - 3.4. amend an erroneous cross reference within the Regulations surrounding people's placement in a male or female prison
 - 3.5. update a reference to the Legal Services Act 2000 to refer to the Legal Services Act 2011 which superseded it.
4. Subject to Cabinet's agreement, my officials will work with Parliamentary Counsel Office to draft amendments to the Regulation before submitting these to the Cabinet Legislative Committee.

Background

5. The Corrections Act (the Act) establishes New Zealand's corrections system, which the Department of Corrections (Corrections) is responsible for administering. The Act includes a power to make Regulations which set out, in more detail than the Act, how the corrections system should operate.
6. These regulatory amendments seek to make business as usual changes to the Regulations to ensure they remain fit for purpose within current settings. The

Hāpaitia te Oranga Tangata Safe and Effective Justice programme will seek to set the strategic direction for broader justice reform. I believe it is appropriate to wait for this initiative to progress further before undertaking any significant regulatory change.

Amendment One: Removes the authority to use tie-down beds

7. Tie-down beds are a form of mechanical restraint authorised for use in the Regulations to prevent self-harming. They were used in the past as Corrections staff had limited resources, specialist mental health training, or the forensic support necessary to provide methods of alternative care.
8. Corrections ceased using tie-down beds in 2016 and only four remain in storage. Since then alternative methods have been used to care for people vulnerable to self-harm. Corrections has also been working to improve the quality of care it provides. \$11.6 million was secured in Budget 2017 to undertake a project transitioning Corrections from a custodial-focused to a multidisciplinary-focused model of care with improved resources, training, and procedures. Corrections received a further \$123.6 million of operational funding in Budget 2019 to increase people's access to mental health and addiction support.
9. Following an article in the New Zealand Medical Journal condemning the use of tie-down beds, I authorised Corrections to release a statement on 11 April 2019 noting that the beds had not been used since 2016 and that it "*has decided to withdraw tie-down beds completely from prisons.*" Following this, organisations including the Ombudsman and Amnesty International, publicly noted their support for the removal of tie-down beds.
10. While there are no plans to use tie-down beds in practice, I recommend authority to use them is removed from the Regulations to ensure they are not used in the future.
11. There is a risk that the removal of tie-down beds could be criticised if a self-harm incident occurs when a bed could have been utilised in extreme circumstances. However, no model of care for people vulnerable to self-harm is fail-safe, including tie-down beds. Furthermore, most prisons do not have tie-down beds, those that do have not used them, and they do not align with best practice care.

Amendment Two: Re-allows Security Officers' use of waist restraints

12. An amendment to the Corrections Regulations in September 2017 inadvertently removed the ability of Security Officers to use waist restraints in conjunction with handcuffs. Security Officers are contractors empowered under the Corrections Act with limited powers, and have been employed in the Auckland area for court and inter-prison escorts, courtroom supervision, and transfers through Auckland Airport. This allows Custodial Officers to remain on regular duty within prisons.
13. Prior to the inadvertent removal of the cross reference, waist-restraints were used by Security Officers for court and inter-prison escorts on rare occasions where people were at risk of self-harm, violence to others, or risk of escape.¹ Without the ability to

¹ This required Prison Director authorisation and was only done five times in the 12 months before the waist restraint error came into force.

use waist restraints, Security Officers have instead been using high security handcuffs. On occasion this has led to property damage from people repeatedly hitting their handcuffs against the transport vehicle. The ability to use waist restraints would prevent this.

14. Waist restraints are also normally used when transporting prisoners by aircraft due to the increased security risk and proximity of the public at airports.² This means that as Security Officers can no longer use waist restraints they are unable to oversee these transfers in the Auckland region as they previously did. Instead, Corrections Officers are being used to manage these transfers. This is creating rostering issues with prison units having to occasionally operate more restrictive unlock regimes to free up staff.
15. Re-allowing Security Officers to use waist restraints will minimise damage to prison vehicles, and allow them to resume staffing airport transfers as they did before the inadvertent removal of that cross reference came into force. This will alleviate pressure on Custodial staff allowing them to return to their regular duties.
16. For these reasons I seek agreement to amend the Regulations to re-allow Security Officers to use waist restraints in conjunction with handcuffs as originally intended.

Amendment Three: Updates search dog notices for prisons

17. The Regulations require notices to be displayed in prisons telling people that narcotics detection dogs may be used in searches. Such notices are important for transparency, consistency, and to prevent people pleading ignorance of the rules. These notices need to be updated as Corrections now uses a variety of dogs to detect items, such as tobacco and cell-phones.
18. I seek agreement to amend the Regulations to replace references to 'narcotics detection dogs' with 'detection dogs' where it concerns search notifications.

Amendment Four: Amends an erroneous cross reference concerning the placement of people in male or female prisons

19. The Regulations specify the conditions under which the Chief Executive must reverse a decision to place a person in a male or female prison. While it has no operational implications, the cross-reference to 65C(2), as inserted by a 2014 amendment, should be a cross reference to 65C(2)(b).
20. I propose that the Regulations be amended to insert the relevant 'b'.

Amendment Five: Updates references to the Legal Services Act

21. The Regulations refer to the Legal Services Act 2000 in specifying the types of legal proceedings where people are entitled to phone their legal adviser. The Act is also referenced in regards to documents that must be served on a prisoner that are in connection to legal proceedings. As this was superseded by the Legal Services Act 2011, cross references within the Regulations need to be updated.

² Prison Directors have the discretion to authorise a person not to be placed in waist-restraints. Reasons for doing so may include health issues, pregnancy, or disabilities.

22. I seek agreement to amend the Regulations to refer to the Legal Services Act 2011 where it currently references the Legal Services Act 2000.

Consultation

23. The following organisations were consulted and supported or had no objections to the Regulations amendments:
- Ministry of Health
 - Ministry of Justice
 - Police
 - Ministry of Foreign Affairs
 - Ministry of Social Development
 - Oranga Tamariki
 - Te Puni Kōkiri
 - Ministry for Women
 - Ombudsman
 - Human Rights Commission
24. The Department of Prime Minister and Cabinet and Treasury have also been informed.

Financial Implications

25. Re-enabling Security Officers to use waist restraints and to undertake airport transfers may create potential savings. Corrections is staffing flights by redirecting Custodial Officers from existing duties. By re-allowing Security Officers to assume this role, the possibility that Corrections may need to hire and train more Custodial staff to permanently assume these duties is removed.

Legislative Implications

26. Subject to Cabinet Social Wellbeing Committee approval, the amendments to the Corrections Regulations will be drafted and submitted to the Cabinet Legislation Committee.

Impact Analysis

27. The Regulatory Quality Team at Treasury has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the grounds that they either repeal or remove redundant legislative provisions, or have no or only minor impacts on businesses, individuals or not-for-profit entities.

Human Rights

28. Organisations such as the Ombudsman and New Zealand Human Rights Commission view any use of tie down beds as potentially cruel treatment. In this view the removal of tie down beds aligns with the New Zealand Bill of Rights Act (1990) and New Zealand's obligations under international human rights treaties.
29. Removing the authority to use tie-down beds would eliminate any residual risk they will be used in the future.
30. I do not consider the remaining proposals have any human rights implications.

Gender Implications

31. The proposals do not have gender implications.

Disability Perspective

32. People who are vulnerable to self-harm in prison often have long term mental or intellectual impairments that hinder their full and effective participation in society. Although tie-down beds are not in use, removing the authority to use them, and the related steps to improve mental health care, will lead to better outcomes for those vulnerable to self-harm. This also aligns with the intent of the New Zealand Disability Strategy 2016-2026 outcome four: rights protection and justice, and outcome seven: Choice and control.

Publicity

33. I intend to publicly announce the removal of the ability to use tie-down beds once enacted.

Proactive Release

34. I intend to proactively release a copy of this Cabinet paper under the Official Information Act 1982 with no redactions, and within the 30 business days timeframe set out by Cabinet.

Next Steps

35. With your approval, I will instruct Corrections to work with the Parliamentary Counsel Office to draft the amendments and submit for consideration by the Cabinet Legislation Committee.

Recommendations

I recommend that the Committee:

1. **Agree** to remove tie-down beds as an authorised form of mechanical restraint in the Corrections Regulations
2. **Agree** to fix a previous amendment's inadvertent removal of a cross reference in the Corrections Regulations by providing Security Officers with the power to use handcuffs in conjunction with waist restraints
3. **Agree** to amend a requirement in the Corrections Regulations that prison search notices must be displayed informing people that they may be searched by 'detection dogs', rather than just 'narcotics detection dogs' as currently stipulated
4. **Agree** to amend an erroneous cross reference in the Corrections Regulations that relates to the Chief Executive's decision to place someone in a male or female prison
5. **Agree** to update references in the Corrections Regulations that refer to the Legal Services Act 2000 to instead refer to the Legal Services Act 2011 which superseded it
6. **Authorise** the Parliamentary Counsel Office to draft the amendments to the Corrections Regulations to give effect to these agreed policy decisions

Authorised for lodgement
Hon Kelvin Davis
Minister of Corrections



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Proposal to Amend the Corrections Regulations

Portfolio **Corrections**

On 11 September 2019, the Cabinet Social Wellbeing Committee:

- 1 **agreed** to remove tie-down beds as an authorised form of mechanical restraint in the Corrections Regulations;
- 2 **agreed** to fix a previous amendment's inadvertent removal of a cross reference in the Corrections Regulations by providing Security Officers with the power to use handcuffs in conjunction with waist restraints;
- 3 **agreed** to amend a requirement in the Corrections Regulations that prison search notices must be displayed informing people that they may be searched by 'detection dogs', rather than just 'narcotics detection dogs' as currently stipulated;
- 4 **agreed** to amend an erroneous cross reference in the Corrections Regulations that relates to the Chief Executive's decision to place someone in a male or female prison;
- 5 **agreed** to update references in the Corrections Regulations that refer to the Legal Services Act 2000 to instead refer to the Legal Services Act 2011 which superseded it;
- 6 **authorised** the Parliamentary Counsel Office to draft the amendments to the Corrections Regulations to give effect to these agreed policy decisions.

Vivien Meek
Committee Secretary

Hard-copy distribution (see over)

Present:

Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Kris Faafoi
Hon Tracey Martin
Hon Peeni Henare
Hon Aupito William Sio
Hon Poto Williams
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Officials Committee for SWC
Office of the Chair of SWC

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